

Docket No. 17777
Serial No.: 10/748,644
Anaqua No.: 64095327

REMARKS

Claim 1 and 21 have been amended to include the limitations of claim 3, omitting the term "airflow". Claim 3 has been cancelled since it has been included in claims 1 and 21. Claims 16, 19 and 23 have been cancelled solely to streamline prosecution.

Claims 1 – 15, 17, 20 – 22 have been rejected under 35 USC 103 as unpatentable over Poirer (US 3002/0057026) in view of Cappel (US 7,008,106).

Applicants note that the Examiner refer to the Rademaker reference in the office action. This appears to be a typo. Applicants have assumed he was referring to Poirer. Please advise if this assumption is incorrect.

Poirer is directed to a method of marketing. He uses re-usable bags on which may be placed advertising. The re-usable bags may or may not be provided free of charge to consumers. The bags are provided at the store, though no mention is made of providing them at the location of the perishable item. Upon reuse of the bags, the consumer is given a discount on merchandise, or some other reward.

Cappel provides a ziplock bag with a tamper evident sealing member.

Applicants' method according to amended claim 1 is providing a container for a perishable item, controlling an element within the container, and charging for the item and the container. The elements to be controlled are discussed in the specification and are, for example, humidity, gas mix and liquid. Neither Poirer nor Cappel, teach or suggest a container to be chosen by the consumer that controls an element as currently claimed.

Regarding independent claim 12; Applicants note that Poirer **does not** teach or suggest providing the consumer with a choice between standard and premium bags. Poirer teaches providing re-usable bags to consumers (par 0004) and rewarding them when the return to the store at a later date with the same bags (par 0005). Par 0014 teaches "selling reusable grocer bags" and "on returning to the store with the bags...". There is likewise nothing in Figure 2

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regarding providing the consumer with an opportunity to make a choice. In Figure 2 the consumer either returns to the store with bags or without bags, in which case he is provided with bags by the store. This is not what Applicants are claiming. Cappel's tamper evident ziplock bag adds nothing to the teachings of Poirer to make claim 12 obvious.

Claim 18, like claim 12, contains a step of allowing consumers to choose between a premium and a standard bag. As noted immediately above, neither Poirer nor Cappel teach or suggest a step of allowing the consumer to choose between various types of containers.

Claim 21 as amended requires that the element control feature be chosen from the group cited. As noted above, neither Poirer nor Cappel teach or suggest a container to be chosen by the consumer that controls an element as currently claimed.

Applicants note that the dependent claims depend directly from one of the four independent claims: 1, 12, 18 or 21 and recite the present invention in varying scope. Applicants have herein discussed Poirer and Cappel in relation to claims 1, 12, 18 and 21. The dependent claims are similarly distinguishable not only because of the patentability of the independent claim but also because of the combination of the subject matter of the dependent claim with its independent claim which makes the dependent claim further distinguishable, and which is not taught or suggested by the cited references, singly or in combination.

Claim 23 has been rejected under 35 USC 103 as unpatentable over Cappel (US 7,008,106) in view of Erlick et al. (US 2004/0066986). This claim has been cancelled to streamline prosecution.

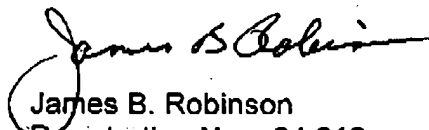
Claims 16 and 19 have been rejected under 35 USC 103 as unpatentable over Poirer (US 3002/0057026) in view of Cappel (US 7,008,106) and further in view of Erlick et al. (US 2004/0066986). These claims have been cancelled to streamline prosecution.

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It is respectfully submitted that the applied references are different in construction from each other and from the present invention, and that the combination of these references would still not suggest the crux of the instant invention. Accordingly, the obviousness rejection is not believed to be warranted and should be withdrawn.

Applicants respectfully request reconsideration of the rejection and allowance of the Application, which should now be in condition for allowance. The Examiner is encouraged to contact the undersigned at his convenience should he have any questions regarding this manner or require any additional information.

Respectfully submitted,


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